

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
Facsimile: 801 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

STEPHEN W. NEBEKER, CRD #1370021;

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-05-0021

The Utah Division of Securities ("Division"), by and through its Director of Licensing, George Robison, and Stephen Nebeker ("Respondent"), hereby stipulate and agree to the following:

1. Respondent was the subject of an investigation conducted by the Division into allegations that Respondent violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*
2. On May 23, 2005, the Division filed an Order to Show Cause against Respondent.
3. In lieu of proceeding with a formal action, Respondent and the Division have agreed to settle this matter by way of this Stipulation and Consent Order ("Order"). If approved, the Order will fully resolve all claims the Division has against Respondent pertaining to this matter. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action.

4. Respondent waives any right to a hearing to challenge the Division's evidence and present evidence on Respondent's behalf.
5. Respondent has read the Order, understands its contents, and enters into this Order voluntarily. No promises or threats have been made by the Division, nor by any member, officer, agent, or representative of the Division, to induce Respondent to enter into this Order other than as described in this Order.
6. Respondent is represented by attorney Craig Wentz and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

The Division makes the following findings:

Background

7. Stephen W. Nebeker ("Nebeker") has taken and passed the Series 6, Investment Company Variable Contracts Representative Examination; the Series 7, General Securities Representative Examination; the Series 26, Investment Company Variable Contracts Principal Examination; the Series 63 Uniform Securities Agent State Law Examination; and the Series 65, Uniform Investment Adviser State Law Examination.
8. Nebeker is not currently licensed in any jurisdiction as a broker-dealer agent but was associated with Round Hill Securities Inc. ("Round Hill") as a broker-dealer agent from April 7, 1998 through September 8, 2003.
9. Prior to becoming associated with Round Hill, Nebeker was employed with PaineWebber Inc. from September 1994 to February 1998 and prior to that worked for Piper Jaffray Inc. from April 1993 to July 1994. Nebeker's Central Registration Depository ("CRD") disciplinary history indicates that Nebeker was discharged from Piper Jaffray in July 1994

"in connection with circumstances surrounding two customer complaints."

10. In October 2003, the Division of Securities ("Division") received a complaint concerning Nebeker's handling of the account of H. Wyatt ("Wyatt").
11. The complaint alleged that Nebeker had conducted excessive trading of securities in Wyatt's account, made unsuitable purchase recommendations, and failed to disclose adequately the costs and fees associated with the investments sold to Wyatt.

The Division's examination into Wyatt's complaint letter revealed the following:

Excessive Trading

12. Two of Wyatt's accounts, an IRA account and a trust account showed excessive trading by Nebeker.

Wyatt IRA Account

13. On or about October 10, 2000, Round Hill opened an IRA account for Wyatt which listed Nebeker as the broker-dealer agent of record on the account.
14. From September 2001 to August 2003, Wyatt deposited \$41,403.17 into Wyatt's IRA account. During that time, the account generated \$18,426.77 in commissions and ticket charges. Commissions are fees paid to a broker-dealer and/or broker-dealer agent for executing a trade. A ticket charge is a transaction fee meant to cover costs related to processing a transaction (e.g., record-keeping costs).
15. The portfolio was turned over the equivalent of 9.6 times a year. Given the commissions and other expenses, the account would have to have earned 44.78% annually to merely break-even.
16. During a 24 month period, Wyatt's account value decreased from an initial deposit of \$41,403.17 to \$13,960.

17. According to trade tickets and confirmations, most of the transactions in Wyatt's account were made based on Nebeker's recommendations.
18. Many of the stocks in Wyatt's account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.
19. According to Round Hill's initial new account form, Wyatt is retired with an approximate annual income of \$50,000, an approximate net worth of \$500,000 and investment objectives of "growth [and] income."
20. At the time of the account opening, Wyatt was 61 years old; however, Wyatt's initial new account form lists the "approximate age" of Wyatt as 50.
21. An updated new account form was completed on March 5, 2002. According to the updated new account form, Wyatt is retired with an approximate annual income of \$75,000, an approximate net worth of \$1,700,000 and investment objective of "growth – trading."
22. Another updated new account form was completed in August of 2002. According to this updated new account form, Wyatt is retired with an approximate annual income of \$75,000, an approximate net worth of \$1 million and an investment objective of "aggressive."
23. Wyatt's signature does not appear on the initial or updated forms.
24. Wyatt informed Nebeker that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.
25. Round Hill sent a letter to Wyatt dated August 9, 2002 (just prior to Wyatt's account form being updated on August 12th to reflect a new investment objective of "aggressive"). This

letter commonly referred to as "happiness letter," was designed to inform Wyatt that a change was made and giving an opportunity to express any objections.

26. The "happiness" letter was sent by Richard Benton, Nebeker's supervisor, and was a standard form letter Round Hill sent out based on the activity in a client's account. The letter stated:

"It is the policy of [Round Hill], along with branch managers such as myself, to periodically review client accounts in the interest of confirming that the activity in an account is consistent with the goals, time horizon, financial capability and risk tolerance of the account owner. During a standard review of customer accounts, your accounts have been brought to our attention. First of all, I would like to express my appreciation for your business. You are a valued client and I want to ensure that we maintain open lines of communication. The purpose of this letter is not to restrict the manner in which you conduct your business at [Round Hill], but rather to advise you of the inherent risks associated with your account activity and positions, and to confirm that they are in line with your current investment objectives. Please sign below to confirm that you are aware of the activity and holdings in your accounts..."

27. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an "aggressive" investment objective).
28. The "happiness letter" is vague and ambiguous in that it does not specifically discuss what type of activity is going on in Wyatt's account, why this activity might be problematic, or the "inherent risks" associated with the activity in her account.
29. Wyatt's signature notwithstanding, the Division found this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity.

Wyatt Trust Account

30. On December 7, 1999 Round Hill opened an account for the Wyatt Trust, listing Wyatt as the trustee and Nebeker as the broker-dealer agent of

record on the account.

31. From July 2000 to August 2003, Wyatt deposited \$150,000 into the trust account. During that time, the account generated \$41,167.69 in commissions and ticket charges.
32. The portfolio was turned over the equivalent of 4.92 times a year. Given the commissions and other expenses, the account would have to earn 17.80% annually to merely break-even.
33. During a 37 month period, Wyatt's account value decreased from an initial deposit of \$150,000 to \$54,492.03.
34. According to trade tickets and confirmations of Round Hill, most of the transactions in Wyatt's account were made based on Nebeker's recommendations.
35. Many of the stocks in the account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.
36. Round Hill had no initial new account form for Wyatt's trust account. There were three account update forms: the first dated March 12, 2002, the second dated August 12, 2002 and signed by principals Benton and unknown (the other signature was indecipherable) and a third dated August 12, 2002 and signed by principals Benton and unknown on August 15th and 16th.
37. According to the March 2002 updated new account form, Wyatt is retired with an approximate annual income of \$50,000 (despite the fact that the March 2002 updated account form for Wyatt's IRA lists Wyatt's annual income as \$75,000) and an approximate net worth of \$1,700,000. Wyatt's investment objective is listed as "growth, trading."
38. According to the August 2002 updated new account forms, Wyatt is retired with

an approximate annual income of \$75,000 and an approximate net worth of \$1 million. Wyatt's investment objective is listed as "aggressive growth."

39. Wyatt's signature does not appear on the updated forms.
40. Wyatt represents that at the time she met Nebeker she informed him that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.
41. Round Hill provided a copy of a "happiness letter", dated August 9, 2002 (just prior to Wyatt's account form being updated on August 12th to reflect a new investment objective of "aggressive growth"). This letter was sent by Richard Benton, Nebeker's supervisor, and is the same standard form letter Round Hill sent to Wyatt regarding her IRA account.
42. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an "aggressive growth" investment objective).
43. This letter is vague and ambiguous in that it does not specifically discuss what type of activity is going on in Wyatt's account, why this activity might be problematic, or the "inherent risks" associated with the activity in her account.
44. Wyatt's signature notwithstanding, the Division found this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity.
45. On December 18, 2003, Wyatt filed an arbitration claim, which was settled in August 2004, with a payment of \$90,000 from Round Hill and/or Nebeker.

II. CONCLUSIONS OF LAW

46. Respondent willfully violated Utah Code Ann. § 61-1-6(2)(g) including:
 - a. making unsuitable recommendations, as proscribed by Utah Administrative Code

("UAC") R164-6-1g(C)(3); and

- b. excessive trading, as proscribed by UAC R164-6-1g(C)(2).

III. ADMISSIONS BY RESPONDENT

- 47. Respondent admits to the foregoing violations of the Act and to the Division's findings.
- 48. Respondent further admits that:
 - a. he did not discourage trades to reduce turnover ratios in Wyatt's accounts and that there should have been less trading in the account;
 - b. he did not warn Wyatt that the amount of commissions she was paying might not be recouped under the existing market conditions; and
 - c. he did not recommend that, in light of the trading strategies, Wyatt obtain independent investment advice when it became apparent that both her accounts had suffered substantial losses.

IV. REMEDIAL ACTION/SANCTIONS

- 49. Respondent is barred from associating with any broker-dealer or investment adviser licensed in the state of Utah.
- 50. Respondent shall pay a fine to the Division in the amount of \$20,000. In light of Respondent's financial condition, the Division waives payment of the fine conditioned upon Respondent's fully complying with the requirements of this Order. If the Division discovers that Respondent's assertion of impecuniosity is false or a material breach of the requirements of the Order or a violation of state or federal securities laws, at any time following entry of this Order, the waived amount will become due and payable immediately. Respondent's counsel, by letter addressed to the Division dated September 27, 2005, outlined the circumstances supporting Respondent's impecuniosity claim.

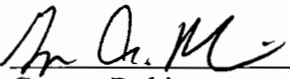
Nothing herein shall be construed as limiting Respondent's right to remedy those circumstances or to improve his financial condition at any time in the future.

V. FINAL RESOLUTION

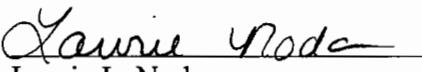
51. Respondent acknowledges that this Order, upon approval by the Division Director shall be the final compromise and settlement of this matter. Respondent further acknowledges that if the Division Director does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
52. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against Respondent arising in whole or in part from Respondent's actions, and that the Order does not affect any criminal cause of action that a prosecutor might bring.
53. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities

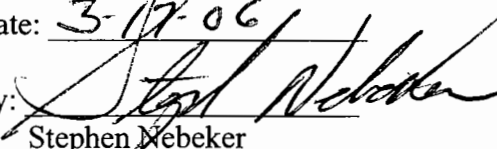
Date: 3/22/06

By: 
George Robison
Director of Licensing

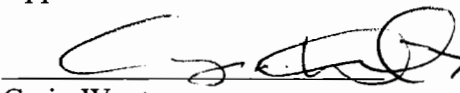
Approved:


Laurie L. Noda
Assistant Attorney General

Date: 3-17-06

By: 
Stephen Nebeker

Approved:

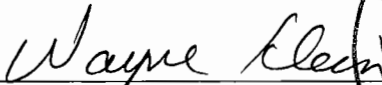

Craig Wentz

ORDER

Based on the foregoing, the Director hereby:

1. Enters as its own findings, the Findings of Fact described in Section I, above.
2. Enters, as its own conclusion, the Conclusions of Law described in Section II, above.
3. Respondent is barred from associating with any broker-dealer or investment adviser licensed in this state.
4. Respondent shall pay a fine to the Division in the amount of \$20,000. In light of Respondent's financial condition, the Division waives payment of the fine conditioned upon Respondent's fully complying with the requirements of this Order. If the Division discovers that Respondent's assertion of impecuniosity is false or a material breach of the requirements of the Order, or a violation of state or federal securities laws, at any time following entry of this Order, the waived amount will become due and payable immediately. Respondent's counsel, by letter addressed to the Division dated September 27, 2005, outlined the circumstances supporting Respondent's impecuniosity claim. Nothing herein shall be construed as limiting Respondent's right to remedy those circumstances or to improve his financial condition at any time in the future.

DATED this 22nd day of March, 2006.

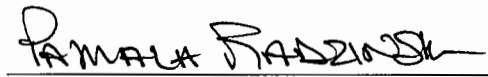

WAYNE KLEIN
Director, Utah Division of Securities



CERTIFICATE OF MAILING

I hereby certify that on the 11th ~~10th~~ day of April 2006, I mailed, regular mail, a copy of the foregoing **Stipulation and Consent Order** for Round Stephen W. Nebeker to:

Stephen W Nebeker
1175 Mercedes Way
Salt Lake City UT 84108



Executive Secretary